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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/726,070	12/02/2003	Michael G. Fisher	0003-033P2	2569

40972 7590 12/14/2005

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EXAMINER

HOPKINS, ROBERT A

ART UNIT	PAPER NUMBER
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1724

DATE MAILED: 12/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/726,070

Applicant(s)

FISHER ET AL.

Examiner

Robert A. Hopkins

Art Unit

1724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,7-10,17 and 18 is/are rejected.
- 7) ☒ Claim(s) 2-6,11-16 and 19 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

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DETAILED ACTION

Note: the current office action supercedes the previous final rejection.

Therefore, because of the citation of a new reference, the final rejection dated 9-29-05 is hereby vacated.

Claim Rejections- 35 USC § 112

Claim 7 recites "said compressed fluid supply source". There is a lack of antecedent basis for "said compressed fluid supply source" in previous claim limitations. Correction is requested.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,8, and 9 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bilkvist(4085975).

Bilkvist teaches a pump for moving a product comprising a vacuum chamber(31) having a product inlet(41), a product outlet(43), a vacuum port(36) and an agitator inlet port(50), a vacuum source(38) coupled to the vacuum port for providing a vacuum to the vacuum chamber whereby product is drawn into the chamber through the product inlet, and a product discharge valve(44) coupled to the product outlet for allowing the product to removed from the vacuum chamber, and wherein the agitator inlet port is

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disposed such that an agitating fluid entering the chamber through the agitator inlet port will impinge on the product prior to the product entering the product discharge valve(column 3 lines 26-45). Bilkvist teaches a regulating valve coupled to the agitator inlet port to control the flow rate of the agitating fluid into the chamber. Bilkvist further teaches wherein the product outlet is disposed near the bottom of the vacuum chamber, and the agitator inlet port is disposed adjacent the product outlet.

Claims 10,17,18 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bilkvist(4085975).

Bilkvist teaches a method for moving a product comprising drawing the product into a vacuum chamber(by vacuum pump 38), removing the product from the vacuum chamber via product discharge valve(44), and agitating the product with an agitating fluid(from conduit 50) prior to the product entering the product discharge valve to prevent clogging of the product discharge valve. Bilkvist further teaches a step of regulating the flow of the agitating fluid(by valve 51) used to agitate the product. Bilkvist further teaches wherein the step of agitating the product includes agitating the product near the bottom of the vacuum chamber.

Allowable Subject Matter

Claims 2-6,11-16,19 are objected to as being dependant upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 2 recites "wherein the vacuum source includes an air pump having an

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intake coupled to the vacuum port and an output coupled to the agitator inlet port” The vacuum source in Bilkvist is not coupled to the agitator inlet port. It would not have been obvious to someone of ordinary skill in the art at the time of the invention to provide a vacuum source which is coupled to the agitator inlet port because Bilkvist does not suggest such a modification. Claims 3-5 depend on claim 2 and hence would also be allowable upon incorporation of claim 2 into claim 1.

Claim 6 recites “further comprising a compressed fluid supply source coupled to the agitator inlet port”. Bilkvist teaches an ambient fluid supply and a valve coupled to the agitator inlet port. It would not have been obvious to someone of ordinary skill in the art at the time of the invention to provide a compressed fluid source coupled to the agitator inlet port because Bilkvist does not suggest such a modification.

Claim 11 recites “wherein: said step of drawing said product into a vacuum chamber applying a vacuum to said vacuum chamber via an air pump; and said step of agitating said product includes supplying said agitating fluid from an output of said air pump”. The vacuum source in Bilkvist is not coupled to the agitator inlet port. It would not have been obvious to someone of ordinary skill in the art at the time of the invention to provide a step of agitating said product includes supplying said agitating fluid from an output of said air pump because Bilkvist does not suggest such a modification. Claims 12-14 depend on claim 11 and hence would also be allowable upon incorporation of claim 11 into claim 10.

Claim 15 recites “wherein said step of agitating said product includes agitating

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said product with a fluid supplied by a compressed fluid source". Bilkvist teaches an ambient fluid supply and a valve coupled to the agitator inlet port. It would not have been obvious to someone of ordinary skill in the art at the time of the invention to provide a step of agitating said product with a fluid supplied by a compressed fluid source because Bilkvist does not suggest such a modification. Claim 16 depends on claim 15 and hence would also be allowable upon incorporation of claim 15 into claim 10.

Claim 19 recites "wherein said product is a wine product" Bilkvist teaches wherein the product is a dry particulate product. It would not have been obvious to someone of ordinary skill in the art to substitute a wine product for the dry particulate material because Bilkvist does not suggest such a modification. Examiner also notes Johnson et al(3460627) teaches moving a wine product, however Johnson et al does not teach or suggest agitating the product. The wine product in Johnson et al travels directly to an outlet without being agitated and with contacting a product discharge valve.

Response to Arguments

Applicant's arguments filed 11-28-05 have been fully considered but are moot in view of the new rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert A. Hopkins whose telephone number is 571-272-1159. The examiner can normally be reached on Monday-Friday, 7am-4pm,

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alternate Fridays off.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Duane Smith can be reached on 571-272-1166. The fax number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval(PAIR) system. Status information for published applications may be obtained from either private PAIR or public PAIR.

Status information for unpublished applications is available through private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197(toll-free).

RAH

December 9, 2005


ROBERT A. HOPKINS
PRIMARY EXAMINER
